CENTER FOR POLITICAL ACCOUNTABILITY

Spotlight on CPA - November 2016

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Election Upheaval Closes Some Reform Doors, Yet One Remains Open

Founder’s Column

By Bruce Freed

Once President Trump and the Republican Congress get down to work, you can bet that a proposed Securities and Exchange Commission rule to require corporations to disclose their political spending is history, for now. It’s also curtains for new requirements for disclosures of campaign money that Hillary Clinton might have ushered into existence, if she had won instead of Trump.

For the writing on the wall, see just a few headlines: **Roll Call**, “Campaign Finance Laws Poised for Rollback Under Trump”; **Vox**, “Republicans plan to ‘drain the swamp’ by gutting campaign finance laws”; and **ProPublica**, “Surprise: Trump’s Advisor on Wall Street Regulations is a Longtime Swamp-Dweller.”

With less, not more, political disclosure on the horizon after a Republican sweep, there remains one proven route to sunlight. It’s the same one achieving concrete results today: Voluntary corporate disclosure of political spending under the model CPA has championed.

This successful initiative doesn’t require action in Congress, a regulatory body or the courts. It’s not upended by a Republican sweep of the government. Given the political earthquake that occurred on Election Day, voluntary corporate political disclosure is quickly becoming the only game in town.

Campaign overhaul groups “plan to put greater emphasis on working to convince big corporations to voluntarily disclose more of their political spending, a move that has had increasing success,” Roll Call noted in its article.

We’re drafting a new initiative to double down on existing efforts to get corporations to acknowledge the risks of political spending, especially when it flows through secret channels, and to make voluntary disclosure. And we believe that as doors are closed for other reforms, backing for voluntary corporate transparency will continue to expand.

Recent news events, too, further strengthen our argument that companies and shareholders face significant risk when they choose to outsource decisions on political spending to other groups, as we have **written before**. A flagrant recent example made headlines this month in Washington state.

A judge imposed apparently the largest campaign finance penalty in history, $18 million, on a D.C.-based grocery manufacturers’ group for violation of Washington state disclosure law (see separate article in this newsletter). The judge faulted the trade association for its steps to shield the identity of food companies whose millions in donations were spent to fight a ballot measure.

A lawsuit by the state attorney general led to the court decision. Names of the donor companies were ultimately made public, and the coverage wasn’t flattering.

On the campaign trail, Donald Trump called today’s money-in-politics system “broken.” Because we agree, we’ve carved out one incremental reform – transparency – and spent more than a decade building bridges with leading U.S. businesses to do something about it.

Along the way, some businesses have actually come to us to ask for guidance about achieving greater transparency and accountability in their political spending.

We’re eager to help them and the nation – and to find every way we can in the new political landscape to expand sunlight through our innovative method that works and that’s gaining increasing mainstream acceptance.

Record $18 Million Penalty in Concealed-Donors Case, Other "Dark Money" Problems

It broke records this month when Judge Ann Hirsch of Thurston County Superior Court ordered a trade group, the Grocery Manufacturers' Association, to pay $18 million in penalties and punitive damages for violating state disclosure laws.

Washington's attorney general said it apparently was the largest campaign finance penalty in national history. According to **Courthouse News Service**, "The Washington D.C.-based trade group hid donor contributions to oppose voter Initiative 522, which required labeling of genetically modified organisms (GMOs), according to Judge Anne Hirsch's November 2 ruling."

"The measure narrowly failed at the ballot, with 51 percent of voters rejecting it. The association spent $11 million to defeat the initiative, but refused to reveal actual donors such as Coke, Pepsi and Nestle, according to the attorney general's office."

Judge Hirsch's ruling explained the following factors that led her to assess the penalty and punitive damages: "Those factors include violation of the public's right to know the identity of those contributing to campaigns for or against ballot title measures on issues of concern to the public, the sophistication and experience of GMA executives, the failure of GMA executives to provide complete information to their attorneys, the intent of GMA to withhold from the public the true source of its contributors against Initiative 522, the large amount of funds not reported, the large number of reports filed either late or not at all, and the latest of the eventual reporting just shortly before the 2013 election."

State Attorney General Bob Ferguson brought the lawsuit that resulted in the penalties, and you can see **his statement here**. Judge Hirsch's ruling can be viewed **by clicking here**.

Ferguson said, "In 2013, GMA raised over $14 million for a new 'Defense of Brands' account. These funds came as a solicitation and were above and beyond regular member association dues. PepsiCo, for example, contributed nearly $3 million to the account. Nestle and Coca-Cola contributed nearly $2 million each."

"GMA then contributed $11 million of that $14 million to 'No on 522.' In an effort to shield individual companies from required disclosure, the money was listed as coming from GMA, not the actual donors, such as Pepsi, Nestle and Coke."

DARK MONEY COMPLAINT IN NORTH CAROLINA: According to **The (Raleigh) News & Observer**, "The N.C. Democratic Party has filed a complaint accusing Republican groups of illegally helping Gov. Pat McCrory by violating the prohibition on corporate contributions and the limit on how much individuals can contribute to political campaigns.

"The complaint asks state elections officials to order the N.C. Republican Party and McCrory's campaign committee to disgorge more than $1 million received from the Republican Governors Association and its super PAC, RGA Right Direction," the article said. An attorney for the state GOP said the funds it received were legal.

STATE JUDICIAL ELECTIONS: "Partisan rancor and an arms race of special interest spending in judicial elections reached new heights this cycle, as the record for TV spending by outside groups in state supreme court races was shattered, reaching nearly $20 million," the **Brennan Center for Justice** reported. "A large portion of this outside spending was so-called 'dark' or 'gray' money, providing little information as to the identities of the underlying donors."

New Milestone in Mutual Fund Support for CPA Model Resolution

Each year at this time, CPA publishes a study of mutual fund votes on corporate transparency and accountability. The latest study included a new milestone: Of the four mutual fund groups receiving the best scores from the 2016 CPA-Zicklin Index, three have largely aligned their proxy votes with their policies.

The study by Fund Votes showed that Morgan Stanley, Wells Fargo & Co. and State Street Corp. backed at least half of CPA's model political disclosure resolutions in the most recent proxy season.

JPMorgan Chase & Co. was the other mutual fund among the four that received top-five rankings in the annual benchmarking analysis.

"More mutual funds are not only letting in the sunlight, they're voting to allow more sunlight at other companies," CPA President Bruce Freed said. You can read the Fund Votes study **by clicking here**.

Corporate Political Spending on Conference Board Governance Center Agenda

In New York City, CPA participated in the annual meeting of The Conference Board Governance Center.

A panel devoted to "Views on Corporate Political Spending" included CPA's Freed; Dan Bross, Senior Director of Corporate Citizenship, Microsoft Corporation; Wesley Bizzell, Assistant General Counsel, Director of Political Law & Ethics Programs, Altria Client Services LLC; and Michael Petro, Executive Vice President, Committee for Economic Development.

In their remarks, Bizzell and Bross mentioned CPA's contributions in helping make companies aware of the importance of disclosure and accountability, and CPA's reputation for working collaboratively with companies.

There also was discussion of renewed engagement by The Conference Board on corporate political spending issues.

CPA in the News

ON TRUMP AND SWAMP-DRAINING: When President-Elect Donald Trump was naming his transition team this month, a spate of news articles suggested that he was “filling his transition team with some of the very sort of people who he has complained have too much clout in Washington: corporate consultants and lobbyists,” as **The New York Times** put it.

CPA’s Freed voiced his opinion that Trump’s transition team had sent an unfortunate signal to his supporters, according to the Times. “This is one of the reasons you had such anger among voters — people rigging the system, gaming the system,” he said. “This represents more of the same.” He also was quoted along similar lines by **The Wall Street Journal**.

ABOUT ‘JUSTICE FOR SALE’: **Corporate Counsel**’s digital magazine has a big cover story asking “Is Justice for Sale in Illinois?” It examines a federal racketeering lawsuit that involves State Farm and allegations of channeling money into the election of a state judge; in September, the lawsuit was granted class-action status. The judge won election in 2004 and voted later with a court majority to overturn a $1 billion award against the company.

“This case raises real questions about buying justice,” Freed told Corporate Counsel. “Judicial spending is unique because of the question of how justice should be dispensed.” He noted, "Companies should be very careful. This has ethical, legal, and reputational consequences for both the business and the judicial system." A sidebar mentioned the 2016 CPA-Zicklin Index of Corporate Political Disclosure and Accountability and quoted from its foreword by Charles Kolb.

CHEVRON WEAK ON TRANSPARENCY: CPA was quoted in an article at **Richmond Confidential**, a local news service for Richmond, Ca., as saying that Chevron “has a very weak record on reporting its spending.” The article examined a report by international unions that was critical of Chevron’s extensive political spending in the state.